IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 19656 of 2007(M)

AGAINST THE ORDER DATED / / IN EP.327/06,EP.19/05 IN OS.157/2003 of I ADDL.M.C.,NEYYATTINKARA
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PETITIONER:

S.K.SREEKUMAR,
GOVINDA MANDIRAM BUNGLOW,
KARUTHOOR DESOM, NEYYATTINKARA.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.P.P.BIJU

RESPONDENTS:
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1. PARUKUTTY AMMA SARASAMMA,
GOVINDA MANDIRAM BUNGLOW,
MARUTHOOR, NEYYATTINKARA.

2. PARUKUTTY AMMA LAKSHMI AMMA,
GOVINDA MANDIRAM BUNGLOW,
MARUTHOOR DESOM, NEYYATTINKARA.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.19656/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 29.5.06 IN IA. NO.636/06 IN OS. NO.79/06 OF THE COURT, NEYYATTINKARA.

EXT.P2:- COPY OF THE EA. NO.327/06 IN EP. NO.19/05 IN OS. NO.157/03 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

EXT.P3:- COPY OF THE ORDER DT. 27.3.07 IN EA. NI.327/06 AND EP.17/05 IN OS. NO.157/03 OF THE 1ST ADDITIONAL MUNSIFF, NEYYATTINKARA.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N. KRISHNAN, J.

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W.P.C. NO. 19656 OF 2007

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Dated this the 11th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order of the 1 Addl. Munsiff, Neyyattinkara in E.A.327/06 in O.S.157/03. The claimant is the son of the first respondent and the 2nd respondent is the sister of the claimant's mother. A suit for partition and declaration was filed between the mother and her sister which ultimately ended in a decree. The Court declared that the plaintiff is entitled to title and possession over 'ABCDENOM' and the 2nd respondent namely the defendant is having title over 'LMONEFGIHJK'. The parties were also permitted to put up the boundary along MONE line in C1(a) plan.

2. What is sought to be executed in this petition is to put up a boundary along MONE line in C1(a) plan. Now, the son wants to resist the execution on the ground that he has filed a suit for partition from his mother as O.S.79/06 and there was in injunction therein and ultimately the suit

happened to be dismissed for default on 26.2.07 and an application to restore the suit to file is pending before the Sub Court. The present claimant is claiming right over the property of the mother. So far as this case is concerned the fight was between the mother and her sister with respect to a property which belonged to them jointly. The Court declared their one half right over the property and found the entitlement of the persons and also fixed the boundary to separate the property. Even if for argument sake the case of the claimant is to be accepted the claimant can only have right over the property which his mother gets and the not the other way. So putting up a boundary separating the property as ordered by the Court in a suit between plaintiff and defendant in that suit will in no way prejudicially affect the right of claimant. The question whether the claimant is entitled to right over the property or not, I am not dealing with it in this writ petition at all as it does not arise. The learned Munsiff has only directed to put up the boundary along MONE line so as to demarcate the two plots. It is

perfectly in order and that has to be allowed. I further make it clear that after putting up a separate demarcating wall and when the mother obtains the property she need not demolish the building until an order is passed in the restoration application which is pending before the Sub Court, Neyyattinkara.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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